IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 30 OF 2002.

State of Goa through
Public Prosecutor,
Panaji. ... Appellant.

Versus

Bassappa Talwar,
r/at Railway Station,
Cansaulim. ... Respondent.

Mr. S.N. Sardessai, Public Prosecutor for the Appellant/State.

Miss Sambhavi Dessai, Advocate under Legal Aid Scheme for the Respondent.

Coram : P.V. HARDAS, J.

Date : 10th October 2003.

ORAL JUDGMENT.

The State, being aggrieved by the acquittal of the respondent/accused for an offence punishable under Section 363 of the Indian Penal Code, by Judgment, dated 17th January 2002, passed by the Judicial Magistrate, First Class, Vasco-da-Gama, in Criminal Case No. 136/S/2000/D, has filed the present appeal.

2. The facts in brief, as are necessary for the decision of the appeal, are set out hereunder:-

P.W.6 P.S.I. Francis Corte was attached to the Vasco-da-Gama Police Station. On 4th September 2000, on the basis of a complaint of P.W.1 Meenakshi Shaikh, he registered an offence against the

respondent/accused for an offence punishable under Section 363 of the Indian Penal Code. The complaint is at Exhibit P.W.1/A. In the presence of P.W.2 Suresh Lala Passi and P.W.5 Madlea Hazoor Shaikh the scene of offence panchanama at Exhibit P.W.2/A was drawn. After recording the statement of the witnesses, a charge-sheet against the present respondent came to be filed. Charge vide Exhibit 5 was framed against the respondent/accused for an offence punishable under Section 363 of the Indian Penal Code. The respondent/accused denied his guilt and claimed to be tried. The prosecution in support of its case examined 6 witnesses.

3. P.W.1 Meenakshi states that she has two daughters. The elder daughter Rubina is aged 3 years and her younger daughter Shaheen is aged 1 1/2 years. On the day of the incident, she had gone alongwith her younger daughter Shaheen to one Doctor Dilip while her elder daughter Rubina was at home. When she returned home, at about 8.00 p.m., she was informed by P.W.3 Lokesh alias Lokappa Lamani that accused had taken her daughter while she was playing. P.W.3 Lokappa had also informed her that the accused had engaged a motorcycle for taking the accused to the railway station. She has identified her signature on the complaint at Exhibit P.W.1/A. In the cross-examination, she has admitted that she did not see the accused taking away her

daughter. She has further admitted that she was informed by P.W.3 Lokappa that accused had taken her daughter. She has also admitted that her house is besides the road. She denied the suggestion as not true that her daughter might have come on the road and, therefore, the accused had lifted her and kept her by the side of the road.

4. P.W.3 Lokappa, who is a motorcycle pilot, states that he is a neighbour of P.W.1 Meenakshi. On 4th September 2000, he had gone to have tea at Janata Hotel alongwith P.W.4 Shaikh Rafique. While they were returning, they saw one person alongwith one small girl. He could not identify the accused in the trial. According to him, the said person asked Rafique to take him to the railway station. Since he knew the girl, whose name was Rubina, he questioned the said person as to whose child it was and the said person stated that it was his child. He took the said person alongwith the child and went to the house of P.W.1 Meenakshi. P.W.1 Meenakshi was at her house and was searching for her child. He states that he gave the child to Meenakshi and thereafter went away. In the cross-examination, he has admitted that near the Janata Hotel there are three roads, one goes up to Mangor Hill, the second goes to Sada and the third goes to Baina Beach. He has further admitted that on the road going to Baina Beach there are

houses on one side and compound wall on the other side of the road. He has further admitted that children from the said houses play on the road. He has further admitted that "it is true that the said person lifted the girl while she was playing on the road and kept her on the side. It is true that the said person had not kidnapped the child.".

5. P.W.4 Shaikh Rafique, also a motorcycle pilot, states that, on 4th September 2000, one person had come alongwith a child near Janata Hotel and had asked him the fare for going to the Vasco Railway Station. Thereafter, P.W.3 Lokappa came and asked him as to where he was going. He informed P.W.3 Lokappa that he was going to the Vasco Railway Station. Thereafter, P.W.3 Lokappa asked him to inquire from the person with the child as to whose child it was and the person disclosed that it was his child. Thereafter, according to P.W.4 Rafique, he, Lokappa and the person alongwith the child went to the house of the said child and one lady came and told them that the child was hers and took the child.

6. Mr. Sardessai, the learned Public Prosecutor on behalf of the appellant/State, has urged before me that the reasoning given by the learned trial Court for acquitting the accused is unsustainable in law and

deserves to be set aside.

7. Miss Sambhavi Dessai, the learned counsel appointed under the Legal Aid Scheme for the respondent/accused and who has very ably argued the appeal, has urged before me that (1) neither P.W.1 Meenakshi nor P.W.3 Lokappa has identified the accused as the said person who had kidnapped the minor child Rubina; (2) there are discrepancies in the evidence of P.W.3 Lokappa and P.W.4 Rafique, which renders the presence P.W.4 Rafique doubtful at the scene of offence; (3) in view of the discrepancies, it is extremely doubtful whether the accused had engaged the motorcycle pilot for taking the child to the railway station and (4) this is an appeal against acquittal and the view taken by the learned trial Court is a possible view, which can be taken on the basis of the evidence on record.

8. It is true that P.W.1 Meenakshi has not identified the accused. According to P.W.4 Rafique, he alongwith P.W.3 Lokappa and the accused had gone to the house of P.W.1 Meenakshi. P.w.1 Meenakshi does not speak about the presence of P.W.4 Rafique or the accused. She only refers to the presence of P.W.3 Lokappa, who had come to return the child. P.W.3 Lokappa also does not state that he had informed P.W.1

Meenakshi that one person had attempted to kidnap the child and that he had rescued the child. all that he states is that he went to the house of P.W.1 Meenakshi and handed over the child. There is no thread of consistency in the evidence of P.W.3 Lokappa and P.W.4 Rafique. According to P.W.3 Lokappa, he and P.W.4 Rafique had gone to the Janata Hotel for a cup of tea and while they were returning they saw a person alongwith a child. According to P.W.4 Rafique, the person with the child had approached him for engaging his motorcycle for going to the railway station and, thereafter, P.W.3 Lokappa came and asked P.W.4 Rafique as to where he was going. According to P.W.3 Lokappa, he had asked the said person as to whose child it was whereas, according to P.W.4 Rafique, it was P.W.3 Lokappa, who had asked him to ask the said person as to whose child it was. Anyway P.W.3 Lokappa has given an admission that the said person had lifted the child while she was playing on the road and kept her on the side of the road. If that be the case, there was absolutely no case of the respondent/accused kidnapping the minor child.

9. This is an appeal against acquittal and the learned trial Court has appreciated the evidence and has come to the conclusion that in view of the discrepant evidence, the evidence of the prosecution witnesses was

not reliable for sustaining the conviction. No perversity in the reasoning of the learned trial Court is pointed out and the view taken by the learned trial Court is a possible view, which can be taken on the basis of the evidence on record. Therefore, according to me, the Judgment of the learned trial Court does not warrant any interference with and, accordingly, Criminal Appeal is dismissed.

(P.V. HARDAS)
JUDGE.

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